


Atty. Dkt. No.: P58317US2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Jim APPINO et al.

Serial No.: 08/865,044

Group Art Unit: 1619

Filed: May 29, 1997

Examiner: Raj BAWA

For: DEVICE FOR DISPENSING A THERAPEUTIC OR COSMETIC SUBSTANCE, THE INERT VEHICLE OF WHICH IS A VOLATILE POLYDIORGANOSILOXANE, AND COMPOSITION INTENDED TO BE USED IN THE DEVICE

RESPONSE

Commissioner of Patents
Washington, D.C. 20231

Sir:

The instant paper responds to the outstanding Office Action mailed November 1, 2001.

Claims 10-17 and 23-28 are pending in the application.

The pending claims were rejected under 35 U.S.C 103(a) as being allegedly unpatentable based on McCrea. Reconsideration is requested.

The §103(a) rejection cannot be maintained because (1) all limitations in the present claims are not disclosed in the art relied on to reject the claims and (2) the art relied on to reject the claims requires materials that are excluded from the present claims by use of "consisting essentially of" as the transitional phrase in the present claims.

To establish *prima facie* obviousness of a claimed invention under §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior

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Via facsimile

703-305-3592

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TRANSMITTAL

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Commissioner of Patents
Washington, D.C. 20231

MAY 02 2002

Sir:

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Transmitted herewith via facsimile are Response and Petition for Extension of Time in the above-captioned application.

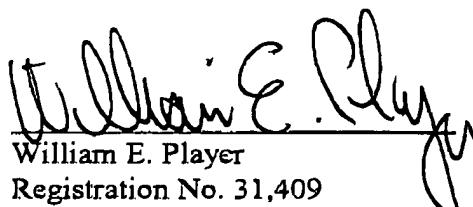
XX Charge Deposit Account No. 06-1358 the amount of \$ 920.00 for: Petition for Extension of Time.

XX If a Petition for Extension of Time is necessary and the Petition and/or the check is not enclosed, this will act as the Petition and applicant herewith petitions the Commissioner to extend the time for response and charge any fees necessary under 37 CFR 1.17 (a)-(d) to Deposit Account No. 06-1358. The Commissioner is also authorized to charge payment of any other additional fees associated with this communication or credit any overpayment to Deposit Account No. 06-1358.

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Atty. Dkt. No.: P58317US2
Date: May 1, 2002
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